IN THE PROVINCIAL COURT OF NOVA SCOTIA

Cite as: R. v. Elliott, 2009 NSPC 5

Date: January 28th, 2009
Docket: C#1634089, 1634090
1642769, 1642770
Registry: Digby, Nova Scotia

Between:

Her Majesty The Queen

v.

Alan S. Elliott

Judge:	The Honourable Judge Jean-Louis Batiot
Heard:	At Annapolis Royal, Nova Scotia
Written decision:	January 28th, 2009
Charges:	Contrary to Sections 446(1)(a) CC, 446(1)(c) CC 11(1) ACPA, 11(2) ACPA
Counsel:	David Acker, Q.C., for the Crown
	Alan S. Elliott, self-represented

By the Court:

INTRODUCTION

1. The Crown alleges a serious fact situation, involving cruelty to animals, leading up to the seizure of some 138 heads of cattle on March 23rd, 2006.

2. It has charged that Mr. Elliott pursuant to the **Criminal Code of Canada**, R.S.C. 1985, Chap. C-46 (and companion charges under the **Animal Cruelty Prevention Act**, S.N.S. 1996, c. 22), alleging events between the 1st day of September 2005 and the 23rd day of March 2006, *at or near Spa Springs Road, Spa Springs, in the County of Annapolis, in the Province of Nova Scotia,*

> *Did, being the owner, willfully cause or willfully permit to be caused unnecessary pain, suffering, injury to animals, to wit., cattle, contrary to s. 446(1) of the Criminal Code of Canada;*
>
> *Being the owner or person having the custody or control of domestic animals, to wit., cattle, did wilfully neglect or fail to provide suitable and adequate food, water, shelter and care for them, contrary to s. 446(1) of the Criminal Code of Canada.*

3. The accused, Alan Elliott, represents himself. He says that as a direct result of a 15 minute DND helicopter fly-by or hover, at 6 p.m. on December 21st, 1999, a slow fly-by, in a westerly direction, over pastures and barned cattle, not only was the cattle distressed but the land was poisoned. That poisoned residue on the ground, over time, affected adversely the land, the water and the cattle it should have nourished, thereby destroying the certified natural status for the farm. It caused, according to Mr. Elliott, birth defects as early as the summer of 2000, deaths, and reduced the hay crops from 2000 to the summer of 2005. He blames the Department of National Defence for the losses to the several corporate entities which controlled the land and the cattle, in spite of his best efforts to forestall this dramatic turn of events. In any event, he denies owning or caring for the cattle, the subject matter of these charges.

THE PROPERTY

4. It is a large farm, known locally as the Elliott farm, situate at 251 Spa Spring Road, in the County of Annapolis, on the north side of the main highway, # 101, mainly on the east side of the Ruggles Road, which runs generally South/North, and on both sides of Spa Springs Road, which

intersects the latter road at right angle. The barns and house are on the north side of Spa Springs Road, next to that intersection.

THE SEIZURE

5. The SPCA applied for and obtained a warrant on March 19th, 2006. There was correspondence with Mr. Elliott. On March 23rd the Warrant was executed, in a well organized fashion. The SPCA, with the help of the RCM Police, seized, in about 20 hours, 138 heads of cattle and disposed of the carcasses of five downed and euthanized animals, nine aggressive and unmanageable animals, which had to be euthanized for personnel (several men were attacked, one suffered a broken wrist) and public safety, and 4 others, found dead on the property. The live animals were shipped to Sussex, New Brunswick, after triage in Lawrencetown.

6. The SPCA first round up the Holstein in the barn and the barn yard, on the north side of Spa Spring Road, to load them up in trucks. They then cleaned up all the manure from the cemented yard, covered it with straw, to provide good footing to the Charolais cattle, brought in or driven from the south side pastures across the Spa Spring Road to that yard; then to have them all loaded. This was not an easy task since some of these cattle were quite aggressive, unfamiliar with people or tractors; some were dangerous and, unfortunately, had to be shot.

7. Seized were,

> on the north side, the Holstein herd, consisting of 21 mature cows, 6 yearling heifers, 6 yearling bulls, 10 bull calves, 4 heifer calves and one mature bull, for a total of 48 live and shipped animals. In addition, there were 4 animals found dead in free stalls or manure pile and one downed animal that had to be euthanized, for a total of 53.
>
> On the south side of Spa Springs Road, the Charolais herd shipped consisted of 33 mature cows and large heifers, 25 small heifers, 20 large bulls, 11 small bulls and one calf, for a total of 90. In addition 12 animals had to be euthanized, for being down, or aggressive (one large cow was blind), or too weak to be transported; one was found dead in the woods.
>
> Some 15 heads escaped capture and stayed on the property.
>
> So the total number of cattle, dead or alive, on the property on that day appears to have been about 171 heads of cattle, or 3 less than the accused's total count of March 7th, 2006, of 174, including, on that day, 10 dead ones.

THE EVIDENCE

8. Ms. Hunt, retired since mid-May 2006, has spent 25 years as the Chief Investigating Officer or Chief Investigator for the SPCA. She has been involved in hundreds of investigations. This seizure, on the 23rd, 24th of March, 2006 at 251 Spa Springs Road, Annapolis County, Nova Scotia was the largest seizure ever undertaken. It was, in her words,"immense".

9. She has talked with Mr. Elliott since just before June 2004 when she visited the farm for the first time after one of her officers, Ms. Millett, also of the SPCA, visited the Elliott land in May 2004.

10. She has had a substantial correspondence with Mr. Elliott, about three hundred pieces. Exhibit # 8, contains some of the faxes and letters from Mr. Elliott, 92 pages in total, a part of this correspondence.

11. As a result of her visit in June of 2004 and correspondence from Doctor Butler on 7th of June, 2004 she wrote to Mr. Elliott on the 25th of November 2004 (Exhibit 7) to advise him of the concerns the Society had with his cattle, about 75 heads, on the south side of Spa Springs Road. A precise head count was not possible. Dead were nine yearlings, three calves and eleven adult carcasses, in various stages of decomposition. But for one *very thin aged cow*, all were in adequate condition. A fecal count indicated a low level of intestinal parasitism. The cattle had access to an adequate supply of water, which had *no abnormal levels of minerals or arsenic.*

12. Mr. Elliott responded on December 6th, 2004 (Exhibit 8, at p.20), discussing the poison contained in engine oil, poisons that are *essentially eternal*, advising cattle die naturally and their remains are dragged into the woods, away from sensitive eyes. None starved in deep snow the previous winter; all were kept outside, and were fed hay in clear areas, on the ground. Any leftover fertilizes the next crop; all crop fields were pastured, divided into many pastures, by permanent or temporary fences; the cattle can drink from the observed ponds, yet this is not the only supply of water. He states that no cattle is sold, because of their being *poisoned by DND*, and there is no gross income. He has a limited income from non-farm sources, and spends that cash to pay expenses, after his own needs have been satisfied. Thus he cannot pay for the suggested tests, but would provide help to have the testing performed without charge to him – *you'll have to pay everyone else* -- however he does not think the testing will be useful to *our livestock* and the SPCA should do something useful, such as to *DEMAND that DND deliver the specific list of poisons they placed on our farm and keep secret, hidden from use in their removal from our ecosystem.*

13. This letter should be put in the context provided by Ex. # 8. Introduced with the consent of the accused, the author, as being free and voluntary statements, Ex. # 8 contains numerous letters,

describing the evidence on which he was acting, his varying positions and possibilities vis à vis the helicopter fly over on December 21st 1999, to the north-east of *our land and barned cattle*, and his efforts to deal with the perceived consequences to *our farm* and the cattle on that land. Described below are those received by the SPCA before the seizure on March 23rd, 2006:

a four page letter (p.2), on January 14th, 2004, to the commanding officer of the Greenwood base describing the fly over, the adverse consequences to the cattle, and the actions he has taken, a demand that DND *Assist the Removal of Harmful Substances From Our Cropland By Providing The Funds To Meet The Expenses etc...,* including an offer to *Give You All Our Normal Livestock Production,* at p. 4;

expressing his concern to the SPCA with respect to the amount of feed on hands for the 111 cows *South Of The Road* , and his needs for help to cull the herd (March 6/04, at p.6);

a recognition of having given, on May 22/04, all 140 heads of cattle on *our Spa Springs farm*, to Darlene Millett, of the SPCA;

a proposal, at p. 8, on June 19/04, for the SPCA, to *Cleanse ... Our Lands,* by purchasing the neighbors' lands and to *Restore SPCA' s Money Expenses By Recovery Of Them From DND;*

at p.9, June 19/04, that he would not agree to enter into such proposal unless the SPCA demonstrates, I infer, its independence;

on July 5/04, at p. 10, what may be construed as a revocation of the proposal;

on August 31/04 and Sept. 9/04, letters to Prime Minister Martin (pp.11 to 16), detailing his issues with DND actions *On Our Farm* (p.13), the lack of response and the consequences;

on Sept 19/04, (pp.17to19), describing the work a land surveyor did on his behalf to establish the topography of *our Lands* and that of the neighbours; an idea to dispose of cattle *Surplus To Our Core Herd* by establishing a slaughterhouse erected on somebody else's land, and *It Would Help A Lot ... if SPCA Wishes To Finance + Administer The Above*;

another offer, on December 11th, 2004 (p.23), to cull the herd, by removing the males and females not needed for breeding, before he can provide an accurate estimate of the need for hay for that winter, but *Nothing Will Be Sold Or Given For Human Use*;

reporting, on March 3/05, of the *Big Lesson* learned, on *How to Utilize All The Kinds Of Foods For Each Group Feeding Setup* and asking Ms. Hunt whether she had located further feed, *Whatever is Edible Will Be Useful;*

on March 25/05 (p.25), suggesting some possible solutions to look after the logistics of moving the two herds of cattle across the Spa Springs Road, *Once Our Fences* are *In Excellent Shape*, emphasizing the need of a transport trailer, free of contamination, kept full time on *Our* property;

the assertions, on June 4th, 2005 (p.27), that *Our Cattle Is Impossible To Manage In Safe Manner Without Some Source Of Funding For All Future Farm Expenses*, and an offer to the SPCA of *All The Culls, Freely, For Safe Disposal Which Won't Harm Anyone*, and an offer to give over to the SPCA any compensation received from the Government of Canada;

an address to *All Canadians*, on December 12th , 2005, describing the loss of 5 cattle, as a result of the fly over of December 21st, 1999, the recovery of 114 breeding females and their 5 bulls, describing that some 600 heads had died since,

69 heads died that year because of *DND's Poisons* (p. 29), the need for *A Safe, Humane Means To Dispose Of Our Poisoned Cattle Each Year – There Is None Now*, and of *A Supply Of Hay To Feed The Poisoned Cattle That have Not Died Yet – We Have 54 Males Cattle Now. Our Herd Only Needs 6. We Also Have An Excess Of Females.* It states also the need to *ORDER* DND to provide a list of poisons and that it remove them;

an invitation to SPCA, on February 6th, 2006, *To Help Supply Cattle Feed Again, This Year, Until I find Out If Canada's New Government Will Order DND To Clean Up Their Poisons And Their Damages* (p.31);

a letter to the Globe and Mail, as a public appeal (p. 32);

on February 13th, 2006, a letter thanking Ms Hunt's personal efforts to help, and an *Offer To Transfer Ownership Of All Our Poisoned Livestock To Anyone (All) Who Provides Funds To Meet Hay/Or Silage Food Needs Of Our Livestock This Winter Season, Wile I Provide Facilities And Care* (p.34);

on the same date, recognizing he is unable to, financially, care for, or dispose of, the cattle (p.35), *As A Person With No Income And No Saleable Assets*;

a request for money to buy hay which cannot be delivered on credit (p.36);

and notice, at p. 37, that there is just enough hay to feed for that day, February 18th, 2006, an admission: *I Have Nothing But The Cattle Themselves And They Are Unsafe*

To Use As Food; and a mention of an interview with a journalist, to give the cattle to *Any Person(s) Who Will Supply The Feed They Must Have From Now* [February 18th, 2006] *Until Pasture Season, And I Will Care For Them Here Without Payment*;

further notice (p.38) to Ms Hunt, and Stephen McNeil, MLA, on February 21st, 2006, requesting funds, as *I Have Used Up All My Supplies Feeding Last Saturday*, and suggesting a forgivable loan from the Provincial Government, *For This Emergency ... To Stop Starvation Of My Cattle From Now Through The Winter Feeding Season*, and suggesting the name of a supplier;

with a further note, the next page, to Mr. McNeil, M.L.A., that Mr Elliott cares for some 170 heads of cattle, *On Our Farm*; the last feeding was *Last Thursday, Eaten Up Last Saturday* and *The Cattle Are Starving, There Is No Income From Our Farm Since July 2000, I Have Met Cash Operating Expenses Since July 2000 With Loans*, and *I Have No Resources Other That The Cattle* (p. 40). He provides a further explanation of the helicopter fly over, his evidence in this trial, with respect to the suspected consequences of that intrusion, including his theory of the damages to the land and water, indicating his need for feed to stop starvation; at p. 43, *Our Cattle Are Starving ... I Last Sold Cattle From My Herd In June 2000;*

a further notice to the Prime Minister, the Premier and others that his cattle was starving, not having any money since *I ... Could Not Sell Any Cattle Because Of The Poisons DND ... On Our Farm Dec 21/99 And Refuse To Remove Or Identify And Have Destroyed More Than 600 Cattle ... to date*, and a request to all to demand action on the part of Government, DND and SPCA to provide feed (pp.41-45);

a further offer, on March 6th, 2006, to Ms. Hunt, to have the cattle disposed and fed to fur bearing animals (p.46);

a letter to Sean Firth, Agra Point in Kentville, advising him that *Our Farm Operates to Certified Wholly Natural Standards Entirely*, and *My Cattle Were Suspended From Certification Dec./99*, explaining thus the lack of sale;

a letter to the same journalist re some *Neighborly Friction*, because of the use of pesticides on the adjoining farm, to the south (p.49);

a further letter, March 10th, 2006, to Sean Firth, in which Mr. Elliott refers to *My Business – Farming – My Cattle – The Farm Assets Available To My Use* (p.51);

a complaint, on March 11th, 2006, to the journalist, that the SPCA has only delivered 74 bales and that *My Cattle to Go Without For 2 Weeks Previous To That*.

He makes allegations of forgery and crimes against parties in a civil lawsuit in which he was, apparently, an unsuccessful party (p.53);

a statement to Ms Hunt, of March 12th, 2006, that *My Cattle Which You Are Providing Food For With Funds From The Nova Scotia Government* is his only asset, compared to 1986, when his net worth, in farm assets, was $900,000;

a letter to Ms. Hunt on March 13/06, refuting suggestions he was starving his cattle, as they were fed in a group, but he did not receive a sufficient supply of hay from the SPCA, and pointing out that the only explanation was the poisons, which must be removed, and *NOT Kill The Animals Exposed*;

a further letter to Ms. Hunt, describing his actions feeding *The New Lot Of Round Hay Bales,* placed *A Few Hundred Feet Of The Spa Springs Road;* and his preference not to like leaving plastic twines on the bales, and recommending another supplier;

he reiterates his earlier offer to give the cattle over to *Anyone Who Supplies Feed Used By Cattle This Season Until Spring Pasture Is Grown + Useable To Receive Ownership Of All My Cattle On Our Farm's Spa Springs, N.S. ... And Applies To SPCA As Well As All Others;* he further states that *I Won't Kill Any Animal – Humans Included – Unless I Am Under Deadly Assault By That Animal;*

an offer, on March 16/06, to give over to the SPCA his Old Age Pension *As Security For Funding Cattle Feed (Good Stuff) For My Cattle;*

two days later, at p. 64, he advises Ms Hunt that he had *Just Got In From Feeding + Checking My Cattle*, the hay, some of bedding quality, *Will Be Gone By Evening*;

a letter to the RCMP, on March 18/06, advising them he had made an offer to the SPCA of a *First Assignment Of (1) My Ownership In My Cattle, (2) My Ownership In My Claim Against The N.S. Government SH107933, (1) My Ownership In Any Pension Benefit From Government ....As Security For All Expenditures...;*

this is repeated to Dr. MacHattie, veterinarian, on March 21/06, at p.71, with the addition that he speaks of himself in the third person, and reserves the right to decide which animal will be killed on the land: *I Will Not Accept Pay From The SPCA To Watch Alan Elliott's Spa Springs Cattle Herd Starve,* and (*Alan Will Not Kill Safe To People Cattle), If SPCA Provides Good Feed To His Cattle Until Spring Grass Grows*; and adds: *You Are Always Welcome And Killing Any Of My Cattle To Test For Specific Poisons From DND's*;

advises Ms Hunt, on March 22/06, at p. 72, he will receive a supply of *Good Quality Cattle Feed* form a previous provider, *For The Health, Comfort + Care Of My Cattle ... Which Have Suffered The Lack Of Quantity And Quality Of Feed Provided By The SPCA.* He reiterates the suggestion of setting up and operating a slaughter house and

that *I And My Cattle Herd Will Greatly Benefit From Any Assistance The SPCA Can Provide.*

14. The SPCA began to provide some hay to Mr. Elliott on February 8th, 2005 until March 2006, periodically, through different vendors, who delivered it to Alan Elliott, at 251 Spa Springs Road, and billed the SPCA (Ex. 12). She advised Mr. Elliott on the 13th of February 2006 to downsize his herd since hay was difficult to obtain and the SPCA would help but was not obliged to do so, as it was not its business.

Visit of March 7th

15. On March 7th, 2006 with Mr. Joyce and two veterinarians, Drs Spearman and MacHattie, attended at 251 Spa Springs because of certain concerns. Some cattle had recently died and fresh carcasses were needed for post mortems.

16. Ms Hunt always dealt with the accused, in all her dealings over these cattle. Mr. Elliott, in those dealings referred to "my cattle".

17. On that day they saw a young calf down, four days dead then. They selected fresh carcasses for post mortem. They viewed animals in the dairy barn including four Holstein cows laying in stalls. One was dead, the second one moved its head. The third one was dead and the fourth moved. A very young calf, with a wet navel, was walking about; one of the downed animals was its mother.

18. Ms. Hunt was shocked at the sight and the animals still alive, particularly given their state and the amount of manure present, one and a half to two feet thick and the build up of fecal matters behind the downed animals, indicating they had been lying there for quite some time.

19. The veterinarians went with Mr. Elliott on the south side of the property to check on the Charolais cattle on the knoll. Mr. Elliott drove a tractor carrying hay. Ms. Hunt stayed behind. The examination on the south side lasted half an hour to forty five minutes. Animals had to be euthanized, two cows down and a calf, as they would probably die. This was done against Mr. Elliott's wishes.

20. Dr. MacHattie is a veterinarian since 1983, mostly involved with large animal, i.e. 55 percent cattle, 40 percent horses and 5 percent mink. He has done thousands of post mortems and examined well over half a million head of cattle. He also has his own small hobby farm. He was qualified to

give expert opinion as to the diagnosis, prognosis and treatment of diseases and illnesses affecting animals with respect to general welfare and well being of animals and appropriate weight and body conditions of large animals.

21. Alan Elliott was a former client of Dr. MacHattie.

22. Dr. MacHattie was familiar with the accused and has always known him to be the care giver of the animals on that farm in Spa Springs. When he arrived with Doctor Spearman and Roger Joyce of the SPCA, Mr. Elliott invited them in and showed them the property. His observations are very much on point.

23. They examined the barn on the north side, the dairy barn, where the Holsteins were kept. It was particularly dirty. They saw lots of manure. Cattle were *very rough looking, some drinking water that was running out of the manure pile,* an indication of a lack of drinking water. Some five cows laid down in *free stalls, looked to be trapped there* **.**

24. Free stalls offer protection to animals which require it, to rest, chew their cuds. They should be able to lay there comfortably; yet these did not, as they could not get up: *Their legs were trapped in places in such ways that they could not have gotten themselves out.* Some, surprisingly, were *not quit dead yet*, but most were.

25. The barn and yard were dirty, with signs they had received some maintenance in the past, as the manure was piled up but not removed and too much was still present, to a depth of more than a foot. A lot was frozen, indicating a lack of daily maintenance.

26. They discussed freely with Mr Elliott, who was aware that some animals *hadn't died yet*, or *hadn't finished dying yet*; he was waiting for them to die on their own. Mr. Elliott was aware a newly born calf, its mother *barely alive*, was wandering around. He was aware the calf did not have any immune system until it nursed its mother, and obtained the first milk containing colostrum, crucial for its survival. Mr. Elliott simply stated that the calf *was probably going to die*.

27. The dead animals were not frozen yet, so, on this March day, had died recently. In cold weather, it takes about a day for a cow to freeze. They were emaciated. Those still alive barely moved or moaned (*when I poke at them, their head moved, but not their body*). The animals had been down for some days, without food or water, or any care or treatment. They could not fend for themselves.

28. The ultimate cause of death of one calf was pneumonia, and easily treated condition, with antibiotics, or, organically, an herbal treatment.

29. These animals were thin, to very thin, to emaciated (so thin that, without food, it would die in a few days). It took weeks to months, without feed to reach that stage.

30. The manure pile behind those trapped in the free stalls indicate they had bee so trapped for several days: *extremely thin to an emaciated animal, went in there, laid down, got trapped in a way that they couldn't get up again and died trapped with a mound of manure behind them.*

31. A simple inspection and proper, simple intervention, would have prevented these deaths. The animals suffered needlessly, and all this suffering could have been avoided.

32. For some time before the seizure, the SPCA was providing feed to Mr. Elliott, and Dr. MacHattie did attend on numerous occasions to ensure the hay was fed to the cattle at an appropriate rate: *We looked over the body condition of the animals* (the Charolais beef cattle, on the south side of Spa Springs Road). *We certainly made note of all the dead horns, skulls and things that were laying around, calves that were around, made note of how many there were, and roughly how many there were, and it certainly stood out that there weren't very many ... They were different than the Holsteins. The Holsteins were all thin to emaciated. On the beef side, there was a complete spread from animals that were almost to the point of being fat down to emaciated to dead ones laying there that were just skin and bones.*

33. They came across a group of six or seven Holstein, in the barn, on the north side of the Road, behind an unused milking parlour. The place was segregated from the rest of the animals. There were newer free stalls (not the antiquated, improper, ones where the dead cattle had been found), which allowed animals to get up more easily (a bovine, to get up, needs room to lounge forward, after having raised its hind quarters).

34. The six Holstein calves were in good condition (*probably a 3,* on a scale of 1 (very thin) to 5 (very fat)). They looked like such an animal of that breed, should look. They were fed good quality hay (*very tasty hay. It looked green and a maturity level that looked like if you could predict what's going to be in it nutritionally, it would be good*). They had plenty of water to drink, from a deep drilled well, were kept clean, in a nice, well maintained environment. They were very different from the rest of the Holstein herd, which was on the thin/emaciated side. Mr. Elliott advised them that these six were part of an experiment he was conducting: they only drank the deep drilled well

water, which he believed to be uncontaminated by the toxins he believes were present everywhere else.

35. Depending on the volume of water, that water could have been provided to the other cattle in that barn.

36. Dr. MacHattie was of the opinion that that experiment was done wrongly (*If he really felt that the water was poisoned ... to take six animals out of 150 or 60, and give them good water and let the rest get what he felt was poisoned water!*). More properly, all cattle should have had access to that water, assuming the volume was sufficient.

37. Whether down or not, Mr. Elliott was not giving any water to the other animals. They had to get it themselves from a pond, outside, but not far from the yard. Thus, only those that had the strength to reach it had water.

38. The waterer in the yard was not tested that day. It was on the next visit, and found to not be working at first, and then to have an insufficient flow of water for all the cattle present.

39. There is no evidence that any of the water was poisoned.

40. Access to water was only one part of the problem. Another was access to sufficient amount of feed, of adequate quality.

41. Mr. Elliott had two herds, one dairy, the other beef cattle. Both herds, particularly the beef herd were getting too large for the farm resources. Dr. MacHattie had been present with Ms Hunt, on March 8th, 2006, when Mr. Sean Firth, a ruminant specialist, had estimated that the farm could support 100 heads of cattle, given the land size, the pastures and the cropland to produce hay for the winter feeding season. Mr. Elliott had some 160 heads at the time of the study and did not like to kill animals.

42. Since the year 2000, Mr. Elliott kept all his animals, rather than culling his herd and selling those culls and the marketable beef cattle (for meat). Keeping each year's crop of calves multiplied the number of cattle kept on the property each year, less the losses experienced each year. The numbers were becoming so great that Mr. Elliott ran out of pastures, and used his hay land for pastures, thus creating the need to buy hay for the winter. Not selling any animals, he had no

income to buy such hay. The problem was increasing each year. The conditions in which the animals were kept was not improving.

43. The SPCA had providing hay for 2 years, to keep the cattle from starvation. Mr. Elliott still had to feed that hay. But by waiting another year, the problem would get worst, without a solution.

44. Dr. MacHattie dealt only with Mr. Elliott, whom he knew to be the only caretaker of these animals. He did so over the previous 2 years. He was the one making arrangements to have hay delivered, and was *doing all the normal caretaking.*

45. It was time, just before the new grazing season, when the animals would be impossible to catch, to gather them and have them removed from those conditions.

46. When faced with a down animal, Mr. Elliott was unemotional, did not make the usual excuses; *it either got up by itself or it died by itself, but he wasn't going to help it.*

47. In his visits with Mr. Elliott, he would walk through the herd. The latter would comment on their state, even mentioning that some animal had gone without feed for days, perhaps because the SPCA was late in delivering feed, or he could not access the hay. Yet it was Mr. Elliott's responsibility to feed the cattle.

48. For over two years, there had been efforts to resolve the impasse to the satisfaction of Mr. Elliott, but to no avail.

49. The March 7th visit ended up with the euthanasia of some animals and arranging for the removal, without breaking down the free stall, of the down animal, for the purpose of conducting the post mortems of six animals.

50. It was obvious to Dr. MacHattie, in light of the good care those six calves were receiving, Mr. Elliott knew how to provide good care; but only did so to those six and not to the others.

51. He does not know Mr. Elliott as particularly caring for animals but he would provide minimal, adequate care. That deteriorated and his observations was that these animals were allowed to die because *Mr. Elliott thought they were poisoned. He may have lost his desire to keep them alive.*

52. A post mortem is important, to determine the cause of death, to take remedial actions and prevent further deaths.

53. Mr. Elliott conducted a thorough cross-examination, showing in effect that in the 1990's, he would use veterinary services quite often, and buy mineral supplements for the cattle, such as selenium, actually found to be in low, to very low levels in post mortems in 2006. Other bills show dehorning or calls when animals were down so that they were treated.

54. Dr. MacHattie recalls Sandy Horsnell, supposed to be the caretaker of these animals, only on one day, fifteen years before, on the dairy side. He was then acting on Mr. Elliott's behalf.

55. There were many collateral issues raised such as fifteen year old invoices for services rendered; the relationship between Dr. MacHattie's wife's cousin married tp a Bill Horsnell, brother of Sandy; the intramedullar pin in Mr. Elliott's leg, somewhat dissimilar to those used in veterinary medicine; what knowledge he had of the property, its brooks, its ponds, and their relationship; the culling practices in the past; the allowed inbreeding of the Charolais herd, yet recognizing that it should not occur in the Holstein herd by bringing in different bulls; whether he knew if Mr. Elliott or Sandy Horsnell could do artificial insemination; the different OGI corporations with which Mr. Elliott is involved (he only knows the property as that of Mr. Elliott); the difficulty of getting neighbours to help, and their fear of bringing their own agricultural equipment on the property; their fear of diseases; his reputation in the community at large; the search of volunteers to help with the seizure; the way the seizure was carried out; the broken gates; the broken fences (repaired); the medical fraud in the livestock industry; inbreeding, embryo transplants; the proper practice in case a new born calf is without its mother (to look for a replacement and place the new born in a safe place); to store feed in a place sheltered from snow; to avoid compression of land when accessing a field with a tractor (star formation of tracks at the gates); abnormality seen on the 7th of July 2000 (the monster calf, deformed, was unfortunately sent for fox meet at the request of Mr. Elliott, rather than for a post mortem); another one, two years later; often Spina Bifida is involved; a tranquilizer shot is not poisonous and the effect disappears within 48 hours; then the meat is fit for human consumption; a warning accompanies the carcass; cattle on the north side did not appear to have good access to water during the winter, etc...

Visit of March 8th

56. Dr. MacHattie came back the next day with Mr. Sean Firth, a Ruminant Specialist, from Agra Point, Kentville. Mr. Firth conducted an evaluation of the cattle on that farm, at the request of the Nova Scotia Department of Agriculture and the SPCA, in order to remove them from the farm, *for potential market and to provide general impressions of management ability* (Ex. 30).

57. Mr Firth was qualified to give opinion evidence with respect the general well-being, proper nutrition and body condition of cattle, as well as acceptable farm management practices.

58. He examined both dairy and beef herds, saw 5 dead animals, observed the body conditions and living circumstances of the herds (lack of care, substandard), and more particularly the lack of segregation between males and females, or by ages, on the beef side, so that breeding would happen indiscriminately, between mother/son, father/daughter, at any time of the year, causing in breeding and, *within 2 to 3 generations, a lack of fit (vigor) in the population*.

59. They spoke with Mr. Elliott about the situation. His position is very clear: he has not sold any cattle since the summer of 2000, believing it has bee poisoned as a result of the exhaust of the DND Helicopter and the meat should not be consumed by human beings. It would take two years to clean up the land from any toxins. No test of soil, water, feed or blood have been done to substantiate Mr. Elliott's belief. In the mean time, Mr. Elliott relies on the SPCA and the Province to supply him with the necessary feed for the winter seasons.

60. Mr Firth makes some recommendations as how to organize the removal of the herds and the possible outcome, whether or not prohibited toxins are present; live auction sale, sale for regular slaughter, or for mink feed. The possible prices would be very low, given the lack of proper preparation of the cattle (thin, horned (difficult to manage), not castrated).

Visit of March 16th

61. On the next visit, on March 16th, 2006, Ms Hunt was invited in by Mr. Elliott into his residence. She advised him of the purpose for the visit, a complaint of neglect. He was cooperative. Dr. McGowan, DVM, joined her there. They then went to inspect the animals. In the barn, north of the road, the Holsteins were in very thin conditions, meandering. One waterer (an automatic watering cup) appeared plugged.

62. Doctor McGowan has been a veterinarian since 1986. He specialized in large animals. His qualifications have been admitted to give opinion evidence with respect to diagnosis and treatment of diseases, infection, illnesses affecting animal welfare, the general well being of animals and appropriate weight and body condition. This is part of his every day work. He certainly has specialized knowledge to provide opinions.

63. In addition, he was an eye witness to certain events on that day. He arrived there in the early afternoon and met with Jessica Hunt of the SPCA. They also met Mr. Elliott who was forthcoming and showed them a nice barn to the north with a feeding area, alleyway and a pole barn where pieces of equipment and hay were stored. He saw some eight round bales and 50 square bales of hay in good shape. It seemed to have been handled well. It appeared to be last years hay, of good quality, however Mr. Elliott wished samples to be taken of that hay for analysis and he did.

64. What particularly drew his attention was the number of dead animals, piled up, adults or calves, in different areas. He also saw lots of cattle feeding at a gravestone type of feeder and others waiting as there was insufficient space for all of them. Indeed most of them were turned towards the feed which appeared to have been distributed just earlier, before his arrival, and what he saw was lots of tail ends which allowed him to examine animals more closely as they were so intent on feeding. Another observation that struck him was the amount of manure; in some places up to three or four feet high. So much so that calves could drown and yet bulls, calves, heifers, calves were all together in this Holstein herd, a dairy cattle without any evidence of a milking industry.

65. They were all mobile, but were thin and eating maniacally.

66. Good husbandry would require clean yard, lack of manure, discrimination between animals, with respect to size and sex; adequate regular supply of feed and water. Only the hay was available at that time. It would also require places for animals to lay down in peace, a comfortable area covered with straw. The only stalls that were available had dead cattle in them. They had obviously gone in looking for peace and eventually died there.

67. From his observation the basic needs had not been met even though the barn itself was a nice barn. Indeed, in case of death, animals are quickly taken away usually to a rendering place but they may even be buried as well. Foremost, they are not left amongst the live cattle. There were many options available before matters got to that point; if it was a matter of lack of money there was enough equipment to sell for money for feed.

68. They then went to the south side of the property, i.e. south of Spa Springs Road. He saw from afar an animal that he presumed dead, not too far from the fence and near a bale of hay. It was a Charolais heifer which did not stir nor appear to be breathing. It was down on its right side. He touched its eye, it blinked, it appeared close to death with a very low heart rate. It was moribund, extremely thin; its rear end had been chewed up by opportunistic scavengers; obviously it had had the ability to get up, as evidenced by the paddies laying around but had been laying for some time. The mucus membranes around the eyes, lips and the rear end were white, a sign of anemia. Mr. Elliott helped him to roll the animal over to its left side. The right side had compromised skin and

abrasions as it was so extremely thin, compromised irreparably as there was no reserve of energy in the body. There was no way to resurrect it. It was cachexic.

69. Doctor McGowan made a recommendation to Ms. Hunt that it should be euthanized; she agreed. He came back to do so, having explained to Mr. Elliott his reasons for doing so; Mr. Elliott stepped in front of him to oppose, explaining that he lets them [the animals] go on their own.

70. Charolais cattle are very resistant and indeed can be aggressive. Doctor McGowan has had experience in the past yet that one offered no resistance at all, no movement. He was able to inject a barbiturate in the jugular vein to end its suffering.

71. He was of the opinion that that animal suffered terribly and he could only despair at the futility and the lack of comprehension of the care giver to have allowed that situation to develop to that point. It had taken time for that animal to get to that stage, perhaps a month and a half to two months, depending on its state at the beginning and the number of times it was fed or the number of days between feedings. At the same time it was part of a herd in a much larger pasture and it had been free to move to eat trees or birch bark and there obviously had been access to water somewhere. It was obviously a painful experience for Dr. McGowan, despite his years of experience.

72. These events were only an evolution in the circumstances of the Elliott farm. With the consent of Mr. Elliott, Ms. Millett, of the SPCA, described earlier attendances at the property on May 5th, May 10th, May 13th (with two other persons including a veterinarian, Doctor McGowan, who described Mr. Elliott as very nice, cordial or cooperative) and May 21st. She relates her observations, having counted 28 dead animals, some calves, in the woods, some with the skin still visible and in an advanced state of decomposition.

73. Mr. Elliott's position then was that there was a serious problem resulting from introduction of substances by persons involved in the operation of a helicopter from search and rescue, 14 Wing Greenwood , at 6:00 P.M., December 21st, 1999 upon *our farm* lands, and that DND would not identify the chemical composition of the substances introduced, nor the amounts. She took photos of those remains.

74. She visited the barn, by the house, and was shocked to see a Holstein cow, dead for some days or perhaps weeks, in the entrance. She was overcome by the smell.

75. As to the deaths, the accused's attitude was simply that it was up to mother nature (dust to dust).

76. The evidence of dead animals, in unusual quantities, was presented by other witnesses. Further, and noticeable, was the lack of haying in the summer months, or of haying too late to obtain a nutritious harvest, to the detriment of good nutrition in the winter.

CAUSE OF DEATH

77. Dr. Spearman, DVM, presented the post mortem results. Exhibit 17 has the post mortem analyses of 24 bovines, all coming from the Elliott farm during the period of time alleged in the Information. Fifteen had to be euthanized. Of these, six were found down, near death. The balance, including the blind cow (a possible consequence of inbreeding) had been very aggressive. The other nine were dead, entrapped in free stalls, or found on manure pile or in a pasture, on in the woods. Fifteen of these animals were Charolais.

78. The seven aggressive animals at the time of the seizure were all in very good physical condition.

DEFENCE EVIDENCE

79. Much of the defence evidence was presented by the Crown (Es. #8 above), given the voluminous correspondence from Mr. Elliott, the many visits with him, and his well known position with respect to the poisoning of the cattle, which he describes in his own evidence as not belonging to him, but to one of the corporations of which he is president. It is thus not surprising that his testimony would emphasize these points, and go into many details.

80. He is a well spoken, intelligent man, a top graduate of the Middleton High School, the Nova Scotia Agricultural College in Truro and of McDonald College in Montreal (McGill), with a B.Sc. (upon graduation he had more money than at the beginning, thanks to the many scholarships and awards). He has farmed since graduation, continuing a family tradition on the family farm. He is involved in the raising of Charolais beef cattle since 1960.

81. He describes in details the event of December 21st 1999, at about 6 P.M., when he saw a DND helicopter hover and fly by, over the north east pasture, the resulting stampede of cattle, his examination of the ground the following day, his consultation with his neighbour Lawrence

Simpson, his concerns about the organic status of the land and cattle, obtained shortly before. He speaks of the deformed calf of July 7th, 2000 and his decision not to sell anymore cattle for human consumption, as he believe the cattle was poisoned. His position is very well documented, and consistent.

82. At first, the cattle south of the Spa Springs Road appeared affected, the Charolais, which received its water only from springs or run-offs from the north side. Later those drinking from the pond or from a water feeder, i.e. water bowl, fed by gravity from a spring north of the barn, were. Eventually only those, on the north side, watered from a deep water well only, were not.

83. Mr. Elliott talked of the different OGI companies, companies in which he surrendered his interest. He says that OGI is the only company that has dealt with the cattle, the farm or the buildings or equipment, and that in 2005 and 2006 he did not own any cattle at Spa Springs nor did he care for any cattle. The principal care giver was Sans (Sandy) Horsnell, who had received a lease with the an OGI Corporation, for twenty years or 2016. Mr. Elliott has no principal occupation since 2004 but the care of his mother, in public housing and his neighbour, John Kwakernaak, given his poor state of health.

84. He speaks at length about farming and breeding techniques, the quality of hay, the proper care of cattle, the genetics to improve a pure bred herd and the inbreeding it necessitates, the proper fencing, the need for crop rotation, his desire not to kill any animal (human or not) except if he/she/it attacks him; of his traumatic accident in 1995, in the woods when he was pinned for a day under a tree, with a broken leg, his miraculous rescue and long convalescence following surgery, and his duty to an old friend (Mr. Kwakernaak) for whom he acts as Attorney; his well documented issues with DND; the search for hay; his limited means; his offers to resolve the issues, his desire for DND to provide chemicals analysis of the fuel it uses in helicopter, etc...

85. He sees all this as very relevant to the case, and was allowed to so testify, to make full answer and defence. He was reminded often to focus on the dates alleged in the informations, between the 1st day of September 2005 and the 23rd day of March 2006, and of the allegations themselves, as well as the need to prove what he alleges. He represents himself, and appears to have particularly relished the cross-examinations of the different witnesses, which he conducted at length.

86. He has presented many witnesses. Many others applied to have their subpoenas quashed, as they did not have any material evidence to offer.

FINDINGS OF FACTS

87. The test in all criminal cases is whether the Crown has established a case against the accused beyond a reasonable doubt, on the whole of the evidence. This includes defence evidence as well: **R. v. W.(D.)**, [1991] 1 S.C.R. 742 (SCC). If the defence evidence denies the basis of the allegations, and this is accepted, it will raise at the very least a reasonable doubt, and the accused must be acquitted.

88. This case presents quite an unusual fact situation, not only because of the size of the seizure of animals, but also because of the manner the situation arose, evolved and amplified over time. It is not about farming generally, but about the care provided to the cattle in question, during the relevant period circumscribed in the Information.

89. To all the evidence, the Elliott farm is a beautiful farm. It has had a long, successful existence. The events since the beginning of this decade have certainly caused a great deal of concerns and work, not only from those who complained to the SPCA, but also to the neighbours and the professionals involved, who have testified. Aside from those whose testimony has already been described, there are many others, including Mr Simpson, who came to Mr. Elliott's help and did Mr Elliott's work for about a year, at no charge; or Mr. Horsnell, who collaborated with the accused, particularly in the organic phase of production in the late nineties, early 2000's and then came to help him, from time to time, for the sheer love of farming, or out of duty to his neighbour.

A) **Owner**

90. Mr. Elliott says that OGI CHAOS Operations Limited, a body corporate owns the cattle in question. It has possibly existed, as a photocopy of a modified Shareholders' Register has been tendered (ex. 40(A).) There is no evidence that this corporation is in good standing, thus a legal entity.

91. It is not clear, thus, whether the Bill of Sale, dated March 21st, 2006 -- two days before the seizure -- and executed by the accused, conveying, for $1.51 some *160 cattle, more or less, present at this date on the property at Our Farm,* is valid. If it is, there would have been a transfer of ownership on that day only, as the accused, as he represents himself to be *the Seller sells ownership of all* [160 cattle, more or less].

92. That document clearly indicates the accused was the owner of the all the cattle, except *the 7 (3 cows, 3calves, 1 bull calf) cattle in the barn are already owned by CHAOS* (another corporate

entity mentioned by the accused). I infer this refers to the privileged small, well kept herd, described earlier.

93. That evidence of ownership is supported by his representations (Ex. 8) of *My Cattle, My Herd,* etc.. mentioned on numerous occasions in his correspondence with Ms Hunt, in 2004, 2005 and 2006. It is true he begins in that correspondence with *Our cattle*, but eventually uses the first person singular, *My*.

94. Mr. Horsnell, who worked for Mr. Elliott, beginning in 1993, left the farm upon, as he says, Alan selling his milk cows and quota in 1994. We now have the evidence that that Holstein herd, a milk herd, was not milked. At most I can infer it was a different herd from that of the past.

95. All the witnesses testified that they dealt with Mr. Elliott only with respect to any issue with the cattle. Ms Hunt, through numerous communications (over 300 pieces), Dr MacHattie, Dr. McGowan, (all three through personal visits and face to face interactions), D. Spearman, Mr. Banks, Mr Simpson, Mr. Horsnell, Mr. Terauds, and others, all knew this cattle as belonging to Mr. Elliott, and dealt with him as owner of such.

96. For instance Peter Terauds, who lives in Torbrook, testified for the defence: in late 1997 Allan Elliott came to buy silage from him, from two silos, to feed his cattle. The agreement was with Mr. Elliott. Mr. Elliott's truck was used to transport that silage and during that transportation there were repairs done to the silos for which Mr. Terauds assumed responsibility. There were some discussions with respect to payment. If not money, it would be in kind, cattle. But when he went to collect, it was a different story. He could not get cattle, he could not get wood, nor could he get a tractor. He was owed some twenty thousand dollars. Eventually, to obtain some payment, he reduced it to ten thousand dollars. Mr. Elliott argued that it was only worth eight thousand dollars. No money has ever been offered or collected. He knew him as the owner of the operation ever since.

97. Lawrence Simpson has been on the Spa Springs Road since 1966, immediately to the East of the Elliott farm. He has known Mr. Elliott since at least 1966. He hayed with him in the nineties. He also helped carry Mr. Elliott out of the woods in 1995 when he broke his leg. He helped Mr. Elliott by milking the cows for about one year, with others. "*I did not ask for money and you did not offer any. If I'm owed I don't care*." When he left, Mr. Elliott took over, in 1996.

98. An issue between them was the fencing between the Simpson property and the Elliott farm. Mr. Simpson cares for it and every spring he would go and fix that fence. His desire was to have good fences to keep his cattle in and likely others' out. Mr. Elliott asked him about a downed fence

after the raid in March 2006 and whether Mr. Simpson was keeping his fences up (when they talked at the fence by the gully on the northeast corner of the southern pasture of the Elliott farm). In fact it was up to Mr. Elliott to maintain his fence as it had broken down and Mr. Elliott's cattle had gone astray. The police had come over. Mr. Elliott put up a new fence. It is not stated at what time of the year, only about three years ago and that Mr. Elliott fixed it himself.

99. Mr. Elliott has complained to him of pollutants, actually not so much of pollutants as a fear that the crew of the helicopter was air lifting his cattle since, according to the Mr. Elliott, cattle tracks on the ground, among many, appear to be ending, implying an air lift.

100. He is familiar with fuel product using them in his own farm equipment. He saw the helicopter hover close to the ground on his own farm, *the old Archibald property*, near a pond, east of the Elliott farm. He went to investigate, in December of 1999. When he got there, there was no smell of fuel, nor did he detect any on Mr. Elliott's land when the latter invited to verify.

101. Mr. Simpson had and still has cows. He has never had any losses due to contaminants; indeed he could not find any such contaminant on his farm; yet the helicopter was over it more than on the Elliott farm.

102. He is no longer on cordial terms with Mr. Elliott.

103. I am aware of the evidence of Ms Stevens, sister of the accused and secretary of the different corporations. Only OGI Full Pale Dairy Incorporated seems to exist at the relevant times. On the evidence, it does not own any cattle.

104. Mr. Horsnell, infra, also says it was Mr. Elliott's cattle.

105. On all the evidence, I conclude that Mr. Elliott was the owner of the cattle at all relevant times.

B) **Caretaker**

106. Mr. Elliott testified at length that because of his broken leg and other ailments, he did not take care of the cattle, and its caretaker was Sans (Sandy) Horsnell.

107. Mr. Horsnell, called in rebuttal -- Mr. Elliott did not call him, thus had a chance to cross-examine him -- stated he was responsible for the cattle, did work on the Elliott farm from 1993-4, and, upon his return from Bermuda, when the accused had a broken leg. There were discussions with respect to organic farming. He worked with the accused until 2003. The accused was his employer, the person in charge.

108. He never owned any cattle at the Elliott farm. These belonged to the accused, and the accused ran the farm, even during the Mad Cow crisis of 2000, which made the animals almost worthless. No animals left the farm, as the prices were depressed and Mr. Elliott began to speak of contamination. The size of the herd increased (no culling, no sale) and became unmanageable. Mr. Horsnell suggested to the accused to sell the herd, and keep only a select few.

109. Mr. Horsnell left the farm in 2003, to run his own business. He also had to reeducate himself, after the hearing birth defect was diagnosed. In effect, he had to learn how to hear, as, up to that point, he had learned "*with my hands and eyes*".

110. He had kept working there until he realized that another word was open to him, once he could hear. There was no future in that farm.

111. He had no title to the farm or the cattle, but continued to help Mr. Elliott on a part time basis, from 2003, milking one cow, putting hay out in the dairy barn, because *"he did not want to leave Alan alone"*. But he had stopped haying, fencing and looking after the beef cattle in 2003. Mr. Elliott was in charge.

112. After 1996, there had been work to have the land certified organic, but it was not pursued after the helicopter incident.

113. Mr. Elliott, after the seizure of March 23rd 2006, approached him and told him then that the cattle was his responsibility. It was not.

114. The only written agreement in evidence is between OGI Web Cor Holdings Ltd and Sans (Sandy) Horsnell, signed on 25th of March, 1997, for the use of the some 453 acres, south of the Spa Springs Rd, *solely for forestry purposes*, at the request of Mr. Elliott, for his own purposes. Mr. Horsnell never did any forestry work on the land. It is irrelevant to the issues at hand.

115. I can only conclude, in light of all the evidence, only Mr. Elliott was responsible for the care of the cattle in question. I accept Mr Horsnell cared for the dairy herd from time to time, but it was

to help the accused. Mr. Horsnell neither had the *custody* nor *control* of the cattle. Only Mr. Elliott did, as it is amply evidenced by his decisions to keep all the cattle, not to cull the herds, to request and obtain hay, to pasture the hay land, to not harvest any hay, to offer such cattle as security for feed (Ex. #8), as well as the numerous interactions he had with others, reviewed under the previous heading, **Owner**.

C) **Willfully causing suffering**

116. From all the evidence, the herds were mismanaged. Each herd had to live within fences, in limited -- but for the beef cattle -- fairly large acreage (perhaps, at the maximum 453 acres). They were allowed to breed indiscriminately, young and old, siblings, parents. This was a particular problem for the beef herd, given the number of bulls present. Indeed the ratio of bulls to cows, usually one to fifty (5 to 114 in 1999, according to Mr. Elliott), over the years had increased uncontrollably, to, in the case of the Holstein herd, not counting the small bulls, 6 to 27, and in the case of the Charolais, again not counting the small bulls, 20 to 58 cows. Including the young bulls, the ratios were, in the case of the Holsteins, 16 to 27; in the case of the Charolais, 31 to 58. This would lead to uncontrolled inbreeding as they were all products of the original herd (except one new Holstein bull).

117. Of a more immediate concern, given that they were fed freely from large round hay bales mainly, deposited on the field, only the strongest ones would be able to feed to their satisfaction. All horned cattle, strong bulls particularly, have a special advantage, as they can be aggressive. The evidence show a lack of regular feeding, a few feeding places, all in insufficient amounts for all to feed satisfactorily. Whereas some 12 head can feed on one bale normally, the number may drop as low as two for aggressive animals.

118. There was a shortage of hay. None was produced on the farm since 2003. Mr. Elliott ran out of means to buy it. He demanded the SPCA to provide feed on numerous occasions. He criticized it for the quantity, the quality and the timing, as if it was a partner. It was his responsibility to obtain it, for his cattle. He had the means to do it, by selling cattle or machinery. He did not. Even when he had it, there were issues as to whether he was feeding it in a timely manner, in sufficient quantity, for all cattle to forage. The SPCA had to monitor that aspect of the feeding. Yet the SPCA was not Mr. Elliott's business partner.

119. Cattle can only eat hay if they have abundant water available. There is clear evidence this was not the case in the barn. Indeed, that cattle was observed on several occasions to drink from manure run-offs, a clear indication of a lack of potable water.

120. The only exception was for the small group of 6 or 7 Holstein, drinking from the deep well water and kept separate from the others, as an experiment. That practice of Mr. Elliott proves

clearly that he knew the appropriate methods to meet the needs of his cattle. He failed to use them for all his cattle.

121. The number of dead cattle was extraordinary, not only that found by SPCA officers, but also as indicated by the accused, from 2000 to 2006, (thus many outside the parameters of these charges). He speaks of several hundreds (500, 600). He says they were poisoned by the residue of the exhaust of the helicopter on December 21st, 1999. Even if the accused has inflated the number for emphasis, they show rate of reproduction that demonstrate the herd could be healthy.

122. There is not one iota of evidence to support his opinion that the cattle, or the land, were poisoned. All the evidence show the deaths, at least for the cattle found dead or near death, between September 1st, 2005 and 23rd of March 2006, to have been the result of mismanagement, over a period of months.

123. Mr. Elliott has indicated he is well educated in the field of agriculture, indeed that he is a scientist. He would have known then that there are procedures to ascertain and prove an hypothesis. He tried to obtain a list to the chemicals from DND. It was refused. He did not do anything else, such as collect samples of soil, water, feed from the affected areas, of blood of suspect cattle for analysis, or of having post mortems done on same.

124. On July 7th, 2000, he is faced with a difficult calving and the cow has to be euthanized. The calf is a *monster calf*, not a welcome happenstance, but not unusual in a herd. Instead of having a post mortem done, yet suspecting a link to the toxins allegedly left by the helicopter, he nevertheless sends it for fox feed, thus destroying any evidence to prove his hypothesis. Yet he says, without evidence, that was the indicator to him that his cattle was *poisoned*, and the basis of his decision to stop all sales of cattle.

125. That decision, not to sell, caused quickly an increase in the herds (keeping one year's worth of calf production, rather than selling it). Eventually this greater number of cattle forced him to pasture his hay lands, thus destroying any ability to produce hay for the winter months. Without an income from the sale of cattle, he had no income to buy hay and had to rely on others, including the SPCA, to provide for his cattle. He had thus, increasingly with the passage of time, more cattle, with less income and feed.

126. He says he believes the cattle was not fit for human consumption. There is no evidence in support of that belief.

127. He refused to cull his herds, or reduced their sizes, or kill any animal, an unusual position for a beef cattleman. There is no evidence he was producing pure bred cattle for breeding purposes only. He had delivered cattle to the slaughter house in the past. This attitude against killing in 2000 is thus recent, and highly suspect. It comes into existence at the time of the Mad Cow crisis, destroying much of the market value of beef cattle. Yet you cannot have a beef herd without, at some point, considering the death of animals for commercial purpose. After all the sole purpose for producing them is for their meat.

128. By allowing the herds to grow without management except bringing some hay to them from time to time, and fixing fences to contain the herd, and haul into the woods the dead animals, he created conditions where only the strongest would survive, often the bulls but also the other stronger animals, well armed with horns, which, through aggression, could exclude all other animals from the hay bale at which they were feeding, until they were satisfied to leave to chew their cud. There were 20 mature bulls on the beef side during the period in question.

129. Only the most aggressive bulls and cows were killed, all in very good conditions. All the other dead ones were cows or calves, starved to death or to a state of extreme weakness. This confirms the expert's opinion of mismanagement.

130. Mr. Elliott had created a set of circumstances, by refusing to listen to reasonable advice, where animals could no longer look after themselves and died.

131. His attitude toward those near death is appalling: it is cold, detached, and inhumane. Dr. McGowan gave the best example of this, when he described the dying bovine, too weak to protect itself from opportunistic scavengers that had started to eat it alive, too weak to move but its head, a cow that had been down for sometime, in an open field, in view of the accused's residence, exposed to the March weather, without any shelter (the woods for instance).

132. When Dr. McGowan recommends that she be euthanized, the accused objects, verbally and physically, denies her dire physical state, argues she had been *cast* (laying in a position whereby *her feet are higher than her midline and she cannot get up*) and the gas in her rumen caused bloating, which she could not belch out; that he righted her that morning; that there were no injury to her perianal region and she had to die on her own (a consistent position of his). Dr. McGowan ended the suffering of the animal humanely.

133. The post mortem of that animal, number 555-06, presented by Dr. Spearman, in Ex. # 17, proves that that cow was in an emaciated state, consistent with starvation, with lacerations to the perianal area.

134. Not only were Mr. Elliott's observations and recall in error, his attitude toward that animal was cavalier and cruel.

135. I do not accept Mr. Elliott' view that the death of these animals was due to a poison of some sort. There is simply no evidence of that.

136. I accept the evidence of Ms Hunt, Drs. MacHattie, McGowan and Spearman, and of Mr. Firth. They prove, overwhelmingly, that the cause of death was Mr. Elliott's mismanagement of the cattle, over a lengthy period of time, which culminated in the period embraced by the information, simply because, against all the evidence, he believed in an hypothesis he could not substantiate. Mr. Simpson, his neighbour, had been exposed to the same event that night of December 21st, 1999, and his cattle did not suffer.

137. Their evidence was objective, based on well observed facts, presented concisely, in a well organized and truthful manner. It was also, for them, distasteful; yet they carried their tasks in a very professional manner.

138. Whether Mr. Elliott <u>believed</u>, due to lack of objective evidence, or <u>knew</u> , based on such evidence, that the cattle were poisoned, that view does not justify him taking the decisions he made with respect to the management – more properly the lack thereof – of the cattle in question. Indeed, knowingly, the accused

> stopped all culls and sales of cattle;
>
> kept too many cattle on the farm, exceeding its capacity to support them;
>
> failed to adequately, in a timely manner, feed them in sufficient quantities to meet their needs;
>
> failed to provide those on the north side of the Spa Springs Road with water, adequate in quantity and quality;
>
> failed to provide suitable and clean housing;
>
> failed to tend the sick or weak animals;
>
> failed to help those animals in distressed, trapped in their stalls;

failed to care for a new born calf;

failed to end humanely their suffering.

139. He decided on a course of action, on all the evidence, to *willfully cause unnecessary pain, suffering injury to cattle*, and *neglect or fail to provide suitable and adequate food, water, shelter and care for them*, as charged.

140. Indeed, by segregating 7 Holsteins, to drink only deep well water, but without affording to all the other animals equivalent living conditions, such as clean bedding, good feed, proper and safe housing, adequate care, his "experiment" was flawed. It could not prove his hypothesis. Moreover, it emphasizes his mismanagement of all the other cattle, and their continued and avoidable severe hardships. He did so knowingly and willfully, knowing the right way of managing, and choosing the wrong way.

141. The Crown has established these two counts beyond a reasonable doubt. I will stay those contrary to the **Animal Cruelty Prevention Act,** supra, to avoid double jeopardy (**R. v. Kienapple**, [1975] 1 S.C.R. 729).

Dated at Annapolis Royal, this 28th day of January, 2009.

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Jean-Louis Batiot, J.P.C.